

# DEP Guidance on the Uniform Oil Response and Prevention Fee

## Introduction

Chapter 251, Acts of 2004, “*An Act Relative to Oil Spill Prevention and Response in Buzzards Bay and Other Harbors and Bays of the Commonwealth*” (the “Oil Spill Act” or “Act”), was signed into law by Governor Romney on August 4, 2004. The Act, which establishes a new General Laws Chapter 21M and amends several other existing general laws, went into effect immediately as an emergency law. An electronic version of the Act is found at <http://www.mass.gov/legis/laws/seslaw04/sl040251.htm>. On August 17, 2004, the Massachusetts Department of Environmental Protection (“DEP”) issued *Interim Guidance* and a related *Fact Sheet*, which are found at <http://www.mass.gov/dep/bwsc/spillact.htm>

The purpose of this Guidance is to:

- give notice to the public of DEP’s establishment of the Uniform Oil Response and Prevention Fee (the “fee”) pursuant to Act and the effective date of the fee;
- define terms relevant to determining to whom the fee applies;
- briefly describe the role of the Massachusetts Department of Revenue’s (“DOR”) in overseeing the collection and remission of the fee and to provide a link to their guidance document; and
- briefly describe the purposes of the related Oil Spill Prevention and Response Fund.

This DEP Guidance does not constitute regulations as that term is defined in General Laws Chapter 30A, nor may it be relied on to create rights, duties, obligations, or defenses, implied or otherwise, enforceable at law or equity. DEP reserves the right to amend this Guidance at any time, but will post any amended version of this Guidance on the DEP webpage.

## Definition of Terms

In determining the scope of applicability of the fee, both DEP and DOR have defined the relevant terms in the Act as follows:

**Crude Oil** means an unrefined or unprocessed liquid solution of hydrocarbons occurring naturally in the rock strata of certain geological formations.

**Marine Terminal** means wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or adjacent areas and structures associated with the primary movement of cargo or materials from vessel to shore or shore to vessel including structures which are devoted to receiving, handling, holding, consolidating and loading or delivery of waterborne shipments or passengers, including areas devoted to the maintenance of the terminal or equipment.

**Petroleum Product** means petroleum or a petroleum by product, including, but not limited to, fuel oil, gasoline, diesel, kerosene, aviation jet fuel, aviation gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, or other liquid hydrocarbons regardless of specific gravity. Petroleum Product shall not include liquefied petroleum gas, including, but not limited to, liquefied natural gas, propane or butane.

**Vessel** means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, whether self propelled or otherwise, including barges and tugs.

### **Establishment and Application of the Fee**

Section 8 of the new Chapter 21M requires the establishment of an “Oil Spill Prevention and Response Trust Fund” (the “Fund”), to be administered by DEP, and directs the Commissioner of DEP to set a “Uniform Oil Spill Response and Prevention Fee” of not less than two (2) cents for each barrel of petroleum product or crude oil, unless the Commissioner finds that a lesser fee will cause the Fund to reach 10 million dollars within six (6) months. Whenever the Commissioner, in consultation with DOR, estimates that the Fund will reach 10 million dollars and the money in the Fund is not required to carry out the purposes of the Fund, the Commissioner shall instruct DOR to cease collecting the fee.

After consultation with DOR, the Commissioner of DEP determined that a lesser fee will not cause the above limit to be reached within 6 months and, accordingly, set the fee at 2 cents per barrel, effective September 1, 2004.

The fee applies to the person owning the petroleum products at the time such products are received at a marine terminal in MA by means of a vessel from a point of origin outside of MA. The owner of the petroleum product is liable for the fee until it has been paid to the state. However, payment of the fee to the marine terminal operator registered with DOR under Chapter 21M is sufficient to relieve the owner from further liability for the fee. The fee must be collected and remitted to the DOR on a monthly basis in the manner described in DOR’s *Technical Information Release 04-20*, which can be found on the DOR’s website at [http://www.dor.state.ma.us/rul\\_reg/tir/tir\\_04\\_20.htm](http://www.dor.state.ma.us/rul_reg/tir/tir_04_20.htm). When the amount in the fund reaches 10 million dollars and the money is not required to carry out the purposes of the fund, DEP shall direct DOR to cease collecting the fee.

### **Oil Spill Prevention and Response Trust Fund**

Section 8 of Chapter 21M also provides for the establishment of the “Oil Spill Prevention and Response Trust Fund.” The purposes of this dedicated fund include covering the costs of spill prevention, responding to and remediating oil spills, providing interest-free emergency loans and paying damage claims that can not otherwise be compensated, providing training and support to state and municipal responders, and paying for vessel navigational safety improvements. The fund will be administered by DEP and funded from a variety of sources, including any costs recovered from parties responsible for remediating the oil spill and from the the Uniform Oil Response and Prevention Fee.